IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 837 of 1998
in
SPECIAL CIVIL APPLICATIONNo 6488 of 1987
with
LETTERS PATENT APPEAL No 838 of 1998
in
SPECIAL CIVIL APPLICATION NO. 6489 OF 1987.
with
LETTERS PATENT APPEAL NO. 839 of 1998
in
SPECIAL CIVIL APPLICATION No. 1795 of 1996.

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR
and

MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

V LAXMIKANT & CO

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 837 of 1998
MR GT DAYANI for Appellant
GOVERNMENT PLEADER for Respondent No. 1
2. LETTERS PATENT APPEALNo 838 of 1998
MR GT DAYANI for Appellant

GOVERNMENT PLEADER for Respondent No. 1, 2

3. LETTERS PATENT APPEAL NO. 839 of 1998
MR GT DAYANI for Appellant.
GOVERNMENT PLEADER for Respondent No. 1.

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE P.B.MAJMUDAR
Date of Judgement : 19/01/2000

ORAL JUDGEMENT : (PER C.K. THAKKAR, ACTG. C.J.)

1. All these appeals arise out of a common judgement and order passed by the learned Single Judge on 1st May, 1998. The appellants were the original petitioners. They filed the above petitions and prayed for an appropriate writ, direction or order, quashing and setting aside the order dated 9th July, 1997 passed by a Tribunal constituted under the Gujarat Public Works Contract Disputes Arbitration Tribunal Act, 1992 (hereinafter referred to as "the Act of 1992) on an application Ex. 5 in TAR No. 310 of 1996 and in companion matters. By the said order, a preliminary contention raised on behalf of the present appellants was negatived. The contention of the learned counsel for the appellants before the Tribunal was that the proceedings before Arbitrator were over and hence they could not have been transferred to the Tribunal in view of the provisions of Section 21 of the Act of 1992.

2. Before the learned Single Judge, it was argued that the provisions of Sections 12 and 21 of the Act of 1992 must be construed in their proper perspective and conjoint reading of both the sections make it abundently clear that the proceedings in which Award or interim Award was made by the Tribunal under the Arbitration Act, 1940 (hereinafter referred to as 'the Act of 1940), will not be affected and cannot be transferred.

Sections 12 and 21 of the Act of 1992 read as under :-

Section : 12 :

"Revision :- (1) The High Court may, suo moto at any time or on an application made to it within three months from the date on which the award or interim award is made or reviewed under this Act, by any party aggrieved by the award or interim

award so made or reviewed, call for the record of any case in which an award or interim award has been made or, as the case may be reviewed and if the Tribunal appears -

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise of its jurisdiction illegally or with material irregularity.

the High Court may make such order in the case as it thinks fit.

(2) For the purpose of exercising its powers or revision under this section, the High Court shall have the same powers as it has, and as far as may be, follow the same procedure as it follows, under the Code of Civil Procedure 1908 while exercising its powers of revision under Section 115 of the Code, and for that purpose the Tribunal shall be deemed to be a Court subordinate to it."

Section 21 :-

"Arbitration Act to cease to apply :- The provisions of the Arbitration Act, shall in so far as they are inconsistent with the provisions of this Act, cease to apply to any dispute arising to such dispute before an arbitrator, umpire, Court authority shall stand transferred to the Tribunal. "

3. The learned Single Judge, after considering the submissions made on behalf of the petitioners-appellants and interpreting the provisions of Section 21 of 1992 Act in the light of a decision of the Division Bench in State of Gujarat Vs. Rajesh Builders, (1993)2 GLR, 1176, held that the proceedings could not be said to be over. In Rajesh Builders (supra), the Division Bench held that even in those cases, where an award was passed by an Arbitrator under 1940 Act, could be said to be pending unless and until the said award has been made rule of the Court. Since the proceedings could be said to be pending proceedings, the provisions of Section 21 of the Act of 1992 would be attracted and no illegality can be said to have been committed by transferring such proceedings to

the Tribunal. It is this order, which is challenged in the present group of Letters Patent Appeals.

4. It appears that on September 21,1999, leave to amend was sought. In the amendment, a contention was raised regarding constitutional validity and vires of Section 21 of 1992 Act as violative of Article 14 of the Constitution of India being arbitrary and unreasonable. The said amendment was granted which read as under :-

"XXB : If Section 21 has to be saved from invalidity and unconstitutionality, it has to be read down as not affected the awards already passed, i.e. prior to 1.1.1994 and all those arbitration proceedings which are not inconsistent with the provisions of the Tribunal Act."

A prayer was, therefore, made to issue a writ declaring Section 21 of the Act of 1992 ultra vires and unconstitutional insofar as it purports to nullify the awards made and published before coming into the operation of the 1992 Act.

5. At the hearing, Mr. Dayani, learned counsel appearing for the appellants contended that the provisions of 1940 Act and the provisions of 1992 Act should be read harmoniously . Drawing our attention to various provisions of 1940 Act, he submitted that there are certain sections in the Act of 1940 which can be invoked to proceedings prior to culmination of an award by an Arbitrator. In this connection, reference was made to Sections 5, 8, 9, 10, 11, 12, 18, 19, 27, 28, 34, 36, 38 and 31. There are however, other sections, which apply to post-arbitral award proceedings, i.e., Sections 14,15, 16,17, 30, and 33 more particularly (2nd part thereof). According to the counsel, to the cases covered by the second part, the provisions of Section 21 of 1992 Act would not apply as the proceedings cannot be said to be pending. He, therefore, submitted that an error apparent on the face of the record is committed in transferring the matters to the Tribunal. He further submitted that if such an action is held permissible under Section 21 of the Act, the said section must be declared as arbitrary, unreasonable and violative of Articles 14 and 19 of the Constitution of India as it interferes with accrued rights. He also submitted that before the learned Single Judge, that question was not raised and when amendment was granted by this Court and the question of validity of Section 21 is challenged, the matter requires consideration. He, therefore, prayed that the matters may be admitted.

8. It was, however, stated by learned AGP that alongwith Special Civil Applications, a Revision Application was also filed by the petitioner being Civil Revision Application No. 2283 of 1995. In fact, the Judgement of the learned Single Judge was a common judgment disposing of three Special Civil Applications and one Civil Revision Application. The learned AGP stated that against the order passed by the learned Single Judge in Civil Revision Application, a Special Leave to Appeal (Civil) No. 14668 of 1998 was filed by the petitioner before the Hon'ble Supreme Court and the same was rejected by the Hon'ble Apex Court agreeing with the view taken by the learned Single Judge of this Court.

9. Now, dealing with the contention of the learned counsel for the appellant on interpretation of Section 21, the learned Single Judge stated as under :-

" In order to appreciate the controversy, it would be appropriate to refer to same of the provision of the Act of 1940 and the Gujarat Act of 1992. It is not in dispute that under the provisions of the Act of 1940 the award made by the arbitrator or umpire is required to be filed before the Civil Court and the Court may make the award rule of the court after following necessary procedure provided under the Act of 1940. However, section 8 of the act of 1992 provides that where any dispute has arisen between the parties to the works contract, either party shall, irrespective of whether such contract contains arbitration clause or not, refer to the matter within one year form the date when dispute arose. Subclause 5 of clause 8 provides that the award including interim award subject to the provisions of Section 11 or 12 shall be final and binding on the parties to the dispute. Sub-section 6 makes such an award a decree within the meaning of section 2 of the Code of Civil Procedure. Thus, it becomes evident that under the Gujarat Act of 1992, irrespective of existence of arbitration clause all disputes pertaining to the works contract in which a state or undertaking is a party is compulsory and of statutory nature. In fact, section 13 ousts the jurisdiction of the Civil Court. Section 13 provides that no Civil Court will have jurisdiction to deal with or decide any question that the Tribunal is empowered to deal with and decide by or under this Act and no injunction

will be granted by any Civil Court in respect of any action taken or to be taken in pursuance of the power by or under the Act. Section 21 provides that at the commencement of the Act of 1992, the provisions of the Arbitration Act of 1940 shall so far as they are inconsistent with the provisions of Gujarat Act of 1972 cease any dispute arising from a works contract and all arbitration proceedings in such dispute before an arbitrator, umpire, court of authority shall stand transferred to the Tribunal. Section 21 of the Act reads as follows :-

"21. Arbitration act to cease to apply The provisions of the Arbitration shall in so far as they are inconsistent with the provisions of this Act, Cease any dispute arising form a work contract and all arbitration proceedings in such dispute before an arbitrator, umpire, court or authority shall stand transferred to the Tribunal."

On a conjoint reading of both the Acts the inconsistency is apparent as already started in the Gujarat Act of 1992. The arbitration in the matter of works where the State or a Public undertaking is a party and compulsory and statues. The award is not required to be made rule of the court, but the award made by the Tribunal is deemed to be a decree within the meaning of Section 2 of the Code of Civil Procedure. In view of this, in my view, there is no substance in the contention raised by Shri Dayani, learned counsel."

10. The Hon'ble Apex Court agreed with the reasons recorded and conclusions arrived at by the learned Single Judge by observing as under :-

"In the present case, the arbitration proceedings in relation to the disputes were pending before the Court and hence the High Court has rightly transferred these proceedings to the Tribunal. Under Section 8 of the said Act on reference to the Tribunal, the Tribunal has to make an award which shall be deemed to be a decree within the meaning of Section 2 of Civil Procedure Code, 1908 and it shall be executed accordingly.

We therefore, agree with the reasoning and

conclusion of the High Court. The S.L.P. is dismissed."

11. From the above discussion, it is clear that according to the learned Single Judge, even if the Award was passed by Tribunal under 1940 Act, till such an Award became rule of the court or decree, the proceedings could be said to be pending. In this connection, the learned Single Judge relied upon on Section 8 of 1992 Act, which reads as under :-

Reference to Tribunal and making of Award :- (1) Where any dispute between the parties to the works contract, either party shall, irrespective of whether such works contract contains an arbitration clause or not, refer, within one year from the date when the dispute has arisen, such dispute in writing to the Tribunal for arbitration in such from and accompanied by such documents or other evidence and by such fees, as may be prescribed.

(2) On receipt of a reference under sub-sec. (1), the Tribunal may, if satisfied after such inquiry as it may deem fit to make, that the requirements under this Act in relation to the reference are complied with, admit such reference and where the Tribunal is not so satisfied, it may reject the reference summarily.

(3) Where the Tribunal admits the reference under Sub-sec. (2), it shall, after recording evidence if necessary, and after perusal of the material on record and on affording an opportunity to the parties to submit their arguments, make an award or an interim award, giving its reasons therefore.

(4) The Tribunal shall use all reasonable dispatch in entering on and proceeding with the reference admitted by it and making the award, and an endeavour shall be made to make an award within four months from the date on which the Tribunal had admitted the reference.

(5) The award including the interim award made by the Tribunal shall, subject to an order, if any, made under Section 11 or 12 be final and binding on the parties to the dispute.

(6) An award including an interim award as

confirmed or varied by an order, if any, made under Section 11 and 12 shall be deemed to be a decree within the meaning of Section 2 of the Code of Civil Procedure, 1908 of the principal Court of original jurisdiction within the local limits whereof the award or the interim award has been made and shall be executed accordingly. "

12. Sub-sections (5) and (6) of Section 8 of 1992 Act, thus, clarify that an Award including an interim award made by the Tribunal shall be deemed to be decree within the meaning of Section 2 of the Civil Procedure Code 1908 subject to appeals, etc. The Hon'ble Supreme Court observed that by holding that the proceedings before the Arbitrator were pending, and by transferring them to the Tribunal, the High Court had not committed an error of law. Thus, according to the Hon'ble Apex Court, the proceedings could be said to be pending and the Tribunal had to make an award in accordance with law. If, it is so, obviously, there is no illegality in transferring the proceedings to the Tribunal. In the circumstances, the proceedings ware rightly transferred to the Tribunal.

13. It was submitted by the learned counsel for the appellants that the provisions of the 1940 Act would not apply only when they are inconsistent with the provisions of the 1992 Act and not otherwise. In our opinion, the question before us is not of inconsistency between two Acts, but of vires and validity of the Act. Since the proceedings were pending, they were rightly transferred to the Tribunal. As the proceedings could be transferred to the Tribunal, the action can not be said to be illegal. The provisions of Section 21 of 1992 Act also, in these circumstances, can not be declared ultra vires or un-Constitutional.

For the foregoing reasons, we do not see any substance in these appeals. They are disposed of accordingly. Notice is discharged in all the matters. No order as to costs.

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